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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of)	MM DOCKET NO. 93-135
)	
THE PETROLEUM V. NASBY CORPORATION)	File No. BRH-890601VB
)	
For renewal of Station WSWR(FM))	
Shelby, OH)	
)	
THE PETROLEUM V. NASBY CORPORATION)	File No. BTCH-921019HX
)	File No. BTCH-921019HY
For transfer of control of Station)	
WSWR(FM), Shelby, OH)	

TO: The Review Board

STATEMENT IN SUPPORT OF INITIAL DECISION
OF ADMINISTRATIVE LAW JUDGE EDWARD LUTON
AND
CONTINGENT EXCEPTIONS
OF
THE PETROLEUM V. NASBY CORPORATION

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Pursuant to §§ 1.276 and 1.277 of the Commission's Rules, The Petroleum V. Nasby Corporation ("Nasby") hereby submits its statement in support of the Initial Decision of Administrative Law Judge Edward Luton ("I.D."), FCC 94D-11, released in the above-captioned proceeding on October 20, 1994. In the event the Mass Media Bureau ("Bureau") elects to submit Exceptions in this proceeding, Nasby is also submitting its Contingent Exceptions on limited matters. In the event the Bureau elects to forego the filing of Exceptions, Nasby's Contingent Exceptions may be disregarded and the I.D. may become final.

Statement in Support of Initial Decision

1. Nasby fully supports the findings and conclusions of Administrative Law Judge Luton ("ALJ") as set forth in the I.D. and urges the Review Board to affirm the ALJ's ultimate conclusion that Nasby is qualified to remain a Commission licensee.

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Contingent Exceptions

2. (A) Evidentiary rulings relative to community witnesses and public file materials. As previously stated, Nasby fully supports the ultimate conclusion of the ALJ that Nasby remains qualified to be a Commission licensee, resulting in Nasby's application for renewal of its station license being granted for a full license term. If, however, the Review Board reviews the instant proceeding based on the taking of exceptions by the Bureau, to the extent such exceptions are to be considered, certain evidentiary rulings of the ALJ should also be reviewed. Nasby is required to raise these matters at this time notwithstanding its support of the I.D. in that if not timely raised in the submission of contingent exceptions by Nasby at this time, Nasby risks losing the potential to raise these matters at a future date should such appeal be necessary.

3. As part of its evidentiary showing, Nasby provided materials consisting of community witnesses (Appendix A to PVN Ex. 1 (rejected at Tr. 47) and letters from the general public to the station taken from the station's public inspection file (Appendix B to PVN Ex. 1 (rejected at Tr. 50)). These materials were proffered to show the station's performance as a counter to any potential negative impact on Nasby's qualifications to remain a Commission licensee based on the blind imputation of Thomas L. Root's adjudicated misconduct. The ALJ found these materials to be irrelevant to, and outside the scope of, the resolution of the designated issues. See Tr. 46-50. While Nasby does not believe

that the proffered materials are necessary to sustain its evidentiary burden which it believes has been fully met, the Bureau's attempt to seek the unqualified nonrenewal of Nasby's station license based exclusively on the imputation of Thomas L. Root's misconduct must be contrasted by the station's performance which should serve to diminish the severity of any potential penalty for such imputation. See, e.g., *RKO General, Inc.*

4. (B) Forfeiture for Violations of § 309(d) of the Communications Act of 1934, as amended, and § 73.3540 of the Commission's Rules. Nasby clear supports the findings and conclusions of the ALJ that there has been no intentional deception by Nasby in connection with its reporting of stock transfers cumulatively involving more than 50% of Nasby's issued and outstanding stock for which FCC approval was later sought by Nasby. See *I.D.*, ¶¶ 28-30, *slip op.* at 4-5. At ¶ 31 of the *I.D.*, however, the ALJ imposed a \$4,000 forfeiture for Nasby's allowance of a *de jure* transfer of control to occur. While Nasby believes it reasonably relied on legal counsel at the time (*i.e.*, Thomas L. Root) to handle such transactions, including informing Nasby whether prior FCC approval was required, legal counsel who had routinely and unremarkably provided such legal services to Nasby since prior to the station's commencement of operations in 1983, it is prepared to remit the forfeiture as a means of moving forward to the immediate resolution of this proceeding, resulting in the unconditional renewal of its station license for a full license term as the ALJ properly concluded is warranted.

For the foregoing reasons, the Review Board is respectfully requested to affirm the *Initial Decision of Administrative Law Judge Edward Luton*, thereby permitting The Petroleum V. Nasby Corporation to continue to provide local broadcast service to the citizens of Shelby, Ohio and the surrounding service area as it has since 1983.

Respectfully submitted,



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November 21, 1994

CERTIFICATE OF SERVICE

Ann C. Farhat, a member of the firm of Bechtel & Cole Chartered, certifies that on November 21, 1994, she caused copies of the foregoing Statement in Support of Initial Decision of Edward Luton and Contingent Exceptions of The Petroleum V. Nasby Corporation to be served by hand on the following individuals:

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